IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

OP.No. 2865 of 2003(N)

PETITIONER:

F.A.SHYLA,
U.D.CLERK, DIRECTORATE OF AGRICULTURE,
VIKAS BHAVAN, THIRUVANANTHAPURAM.

BY ADV. SRI.KKM.SHERIF
SRI.P.A.MOHAMMED ASHROF

RESPONDENTS:
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1. **THE SECRETARY TO GOVERNMENT,**
   AGRICULTURAL DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE DIRECTOR OF AGRICULTURAL,**
   VIKAS BHAVAN, THIRUVANANTHAPURAM.

3. **M.K.GEETHA,**
   UPPER DIVISION CLERK,
   KRISHI ASSISTANT EXECUTIVE ENGINEER OFFICE,
   MALAPPURAM.

4. **SHERLY GEORGE,**
   UPPER DIVISION CLERK,
   PRINCIPAL AGRICULTURE OFFICE, IDUKKI.

BY GOVERNMENT PLEADER SMT.K.R.DEEPA

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO.5065/2003 IN OP. NO.2865/2003

DISMISSED

11.12.2006 **SD/- KURIAN JOSEPH, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER SA. (1) 83141/97 DT.3.4.88 OF THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE ORDERSA (1) 32106/95 (2) DT.23.9.2000.

EXT.P3:- COPY OF THE REPRESENTATION DT.13.11.2000 BEFORE THE 2ND RESPONDENT.

EXT.P4:- COPY OF THE ORDER NO. O & m (5) 10241/87 DT. 17.5.89 TOGETHER WITH LIST APPENDED TO IT.

EXT.P5;- COPY OF THE CIRCULAR, NO. SA (1) 32106/95 DT.18.12.95 TOGETHER WITH THE LIST./

EXT.P6:- COPY OF THE ORDER NO.SA(10 65839/2000 DT.9.1.01.

.EXT.P6(a):- COPY OF THE ORDER NO.SA(3) 63746/2000 DT.9.1.01.

EXT.P7:- COPY OF THE PETITION DT.12.2.01.

EXST.P8:- COPY OF THE REPRESENTATION DT.12.10.01 BEFORE THE 1ST RESPONDENT TO DIRECT THE 2ND RESPONDENT.

EXT.P9:- COPY OF THE MEMO DT.28.12.01

EXT.P10:- COPY OF THE ORDER NO.9985/EA 3/.1.AD DT.11.1.02 ADDRESSED TO THE 2ND RESPONDENT.

EXT.P11:- COPY OF THE ORDER NO.2179/EA3/02/AD DT.6.1.03.

/TRUE COPY/

tss

KURIAN JOSEPH, J.

O.P. NO. 2865 OF 2003

Dated this the 11th day of December, 2006

J U D G M E N T

Petitioner is essentially aggrieved since her promotion to the UD Cadre, as per Ext.P1, with effect from 1.4.87 was cancelled as per Ext.P2, on the basis of a complaint filed by respondents 3 and 4. Petitioner joined service as LD Clerk on 28.11.1984. She became test qualified in February 1986. Her probation was declared on 25.2.1987. The 4th respondent is an employee belonging to the Scheduled Caste Community. The stand taken in the impugned Ext.P2 order is that since she had not completed the probation for want of probation test, she could not have been promoted when her juniors were promoted. That stand cannot be appreciated. Member of the Scheduled Caste Community is exempted from both promotion test and probation test. As far as the 3rd respondent is concerned, she was given promotion with effect from 2.5.1987. Petitioner has no quarrel that both of them are seniors to her. Her grievance is that since the petitioner became test qualified in February 1986, whereas the 3rd respondent only in 25.11.86 and since the 4th respondent was otherwise qualified to be promoted being a member of the Scheduled Caste

Community, and since there were vacancies in June 1986 and since persons who were test qualified were promoted as on 11.6.86, petitioner should have been promoted as on 11.6.86 along with the 4th respondent. The 2nd respondent does not seem to have understood the crux of the issue while passing the impugned Ext.P2 order or while considering the representation of the petitioner, as per Ext.P6. The Government also does not seem to have applied its mind on the crucial contentions raised by the petitioner. Though the petitioner made an attempt before the Government, the same was also turned down by a non-speaking order stating that the Director had considered the matter.

I quash Exts. P10 and P11. There will be a direction to the 1st respondent-Government to consider Ext.P7 representation submitted by the petitioner in the light of the observations and factual details contained in this judgment and pass a proper order adverting to the contentions taken by the petitioner, with notice to the petitioner and respondents 3 and 4 within a period of four months from the date of receipt of a copy of this judgment. The original petition is disposed of as above.

KURIAN JOSEPH, JUDGE

vps

KURIAN JOSEPH, JUDGE

OP NO.2865/03

JUDGMENT

11th DECEMBER, 2006